

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JERRY VANDIVER,

Plaintiff,

vs

CASE NO: 05-CV-72835

HAZEL AUSTIN,
SUSAN DeBRUYN,
NURSE KING, and
DENISE FREED-DANIELS,

Defendants.

**ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND GRANTING DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY
JUDGMENT**

Before the court is this action pursuant to 42 U.S.C. § 1983 alleging numerous violations of Plaintiff's constitutional right to receive minimally adequate medical care while incarcerated. Two remaining defendants, Austin and Freed-Daniels, have moved for summary judgment. Pursuant to 28 U.S.C. § 636(b)(1)(B), the motion was referred to United States Magistrate Judge Donald A. Scheer for a Report and Recommendation. The Magistrate Judge issued the Report on May 28, 2008, recommending that the court grant the motion and further that the remainder of the case be dismissed since the final two Defendants remain unserved at this late date in spite of an order requiring Plaintiff to show cause why they should not be dismissed.

If objections are timely filed, i.e., within ten days of the issuance and receipt of the Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1) the court must review *de novo* those portions of the Report to which objections have been raised. Almost three weeks have passed since the original ten-day filing deadline fell, and Plaintiff has filed no objections. No mailed communications to Plaintiff have been returned as undeliverable, and

the court concludes that Plaintiff has waived his opportunity to react to the Report. Failure to file specific objections constitutes a waiver of any further right of appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981), *Thomas v. Arn*, 474 U.S. 140 (1985), *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991).

The court has carefully reviewed the Report, and concludes that the Magistrate Judge's findings and conclusions are correct. Accordingly, the Report is HEREBY ACCEPTED and incorporated by reference. Defendants' Motion for Summary Judgment is HEREBY GRANTED. The remaining unserved Defendants are DISMISSED.

This is a final order that closes the case.

IT IS SO ORDERED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 30, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 30, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522